

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ROCK HILL DIVISION

David W. McCraven,  
Plaintiff,

v.

Michael J. Astrue, Commissioner of Social  
Security Administration  
Defendant.

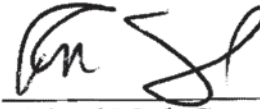
Case No. 0:09-cv-1305-RMG-PJG

**ORDER**

Before the Court is Plaintiff's motion for attorneys' fees. (Dkt. No. 28). The Defendant has opposed the motion. (Dkt. No. 29). In this matter, the Commissioner denied benefits. Magistrate Judge Gossett recommended affirming the denial. After a *de novo* review, this Court decided not to adopt the Magistrate Judge's recommendation and remanded the matter for further administrative proceedings.

As to the motion at bar, having considered the briefing from both sides, this Court denies the Plaintiff's motion for attorneys' fees. The Equal Access to Justice Act provides attorneys' fees in actions where the government's position is not substantially justified. The substantial justification test is one of reasonableness in law and fact. *See Pierce v. Underwood*, 487 U.S. 552, 565 (1988). Here, the Government's position was not unjustified. For one, the Magistrate Judge recommended affirming. Further, among other reasons, the position espoused by the Government was not without reason and was well-briefed and argued. Ultimately, however, this Court decided to remand the matter for further findings.

**AND IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read 'R. Gergel', is written over a horizontal line.

Richard Mark Gergel  
United States District Court Judge

January 19, 2011  
Charleston, South Carolina